



# BOARD OF PAROLE HEARINGS



ADMINISTRATIVE DIRECTIVE NO: 2013-05

**SUBJECT: SPECIAL PAROLE PLAN CONSIDERATIONS FOR INMATES  
SUBJECT TO DEPORTATION**

## INTRODUCTION

This Administrative Directive clarifies special factors to be considered at parole hearings when an inmate is subject to deportation by the Immigration and Customs Enforcement Agency (ICE).

## LEGAL AUTHORITY

**California Code of Regulations (CCR), title 15, section 2402(d)(8)**, states: "Understanding and Plans for Future. The prisoner has made realistic plans for release or has developed marketable skills that can be put to use upon release."

*In re Andrade* (2006) 141 Cal.App.4th 807 held that the Board cannot require parole plans in California and Mexico when the probability of deportation is high. Specifically, the court found that "[b]y requiring petitioner to develop parole plans in both California and Mexico, the Board is holding him to a higher standard than the standard required by California Code of Regulations, title 15, section 2402. . . . Accordingly, he need only have realistic parole plans in Mexico to satisfy the requirements of section 2402, subd (d)(8)." (*Id.*, at pp. 817-818.)

However, "In construing this regulation we are not holding that the Board is barred from ever requiring a prisoner facing deportation to develop parole plans in the state. It may be that because of other circumstances (e.g., inmate not convicted of an aggravated felony or the inmate is eligible for asylum), that a prisoner's deportation is not a near-certainty . . . . In many cases, . . . , the Board would be able to discharge its responsibility by conditioning parole upon a prisoner's release to [ICE] custody. [Citations.]" (*Id.*, at p. 818.)

## DISCUSSION

Pursuant to CCR, title 15, section 2402(d)(8), a parole panel should consider an inmate's plans for release when deciding whether to grant parole. Such inquiries are case specific and should focus on the viability of the inmate's plans (whether they are realistic). Based on *In re Andrade*, if the panel determines there is a high probability the inmate will be deported<sup>1</sup> then the hearing panel may not require California parole plans. However, if it is uncertain whether an inmate will be deported the hearing panel may inquire into California parole plans.

For example, if the inmate's deportation order involves a country that does not have a deportation treaty with the United States then the panel can be certain the inmate will not be deported. In such a case, the panel should instead inquire into the inmate's plans for release in California. A list of non-treaty countries and sample questions to ask in order to make such a determination are attached to this administrative directive.

## DIRECTIVE

When deciding whether to ask an inmate who is not a United States citizen about their plans for release in California, a parole panel need not determine whether the inmate will actually be deported (that decision will be reached by an immigration judge) but simply determine how likely it is that the inmate will be deported. If it is a near certainty that an inmate will be deported, then the panel shall not deny parole based on the lack of realistic plans for release in California. However, if it is uncertain that an inmate will be deported, then the panel may deny parole if the inmate's plans for release in California pose an unreasonable risk of danger to society.

*This Administrative Directive shall take effect immediately. If you have any questions concerning the contents of this Administrative Directive please contact the legal office at (916) 324-7604.*

APPROVED BY:

**JENNIFER P. SHAFFER**  
Executive Officer, BPH

DATE: \_\_\_\_\_

<sup>1</sup> If an inmate who is not a United States citizen is granted parole, they are transferred to an ICE detention center and scheduled for deportation proceedings before an immigration judge. At the hearing, the judge considers many factors when deciding whether or not to order the inmate's deportation, including whether there is a treaty with the destination country, the nature of the inmate's crime, the inmate's medical condition, whether the inmate is contesting deportation or seeking asylum, among other things.



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## Sample Questions to Determine the Likelihood an Inmate will be Deported

1. Whether the destination country has a treaty with the United States.
2. Whether or not the inmate has an aggravated felony (which can be found at 8 USCA section 1101).
3. Whether the inmate has a medical condition that would prevent the destination country from accepting him or her.
4. Whether the inmate is contesting the deportation order.
5. Whether the inmate is seeking asylum in the United States.

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## Appendix B. Countries with Which the United States Has No Bilateral Extradition Treaty

Afghanistan	Georgia	Qatar
Algeria	Guinea	
Andorra	Guinea-Bissau	
Angola		Russian Federation
Armenia		Rwanda
Azerbaijan	Indonesia	
	Iran	Sao Tome & Principe
Bahrain		Saudi Arabia
Bangladesh	Kazakhstan	Senegal
Belarus	Korea, North	Serbia and Montenegro <sup>a</sup>
Benin	Kuwait	
Bhutan	Kyrgyzstan	Somalia
Bosnia and Herzegovina <sup>a</sup>		Sudan
Botswana		Syria
Brunei	Laos	
Burkina Faso	Lebanon	Taiwan <sup>b</sup>
Burundi	Libya	Tajikistan
		Togo
Cambodia	Macedonia <sup>a</sup>	Tunisia
Cameroon	Madagascar	Turkmenistan
Cape Verde	Maldives	
Central African Republic	Mali	Uganda
Chad	Mauritania	Ukraine
China	Moldova	United Arab Emirates
Comoros	Mongolia	Uzbekistan
Croatia <sup>a</sup>	Montenegro <sup>a</sup>	
Ivory Coast (Cote D'Ivoire)	Morocco	
	Mozambique	Vanuatu
		Vatican City
Djibouti	Namibia	Vietnam
	Nepal	
	Niger	
Equatorial Guinea		Western Samoa
Eritrea		
Ethiopia	Oman	Yemen, Republic of
		Zaire

- a. The United States had an extradition treaty with the former Yugoslavia prior to its breakup (32 Stat. 1890). Since then, it has recognized at least some of the countries which were once part of Yugoslavia as successor nations, see, e.g., *Arambasic v. Ashcroft*, 403 F.Supp.2d 951 (D.S.D. 2005) (Croatia); *Sacirbey v. Guccione*, 2006 WL 2585561 (No. 05 Cv. 2949(BSJ)(FM))(S.D.N.Y. Sept. 7, 2006)(Bosnia and Herzegovina), overruled on other grounds by 589 F.3d 52 (2d Cir. 2009).
- b. The United States severed official relations with Taiwan in 1979, when it recognized the People's Republic of China as the sole legal government of China. Certain agreements entered prior to the termination of official relations, as well as relations contemplated under multilateral agreements since then, are administered on a nongovernmental basis by the American Institute in Taiwan, which was established pursuant to the Taiwan Relations Act (P.L. 96-8).



# BOARD OF PAROLE HEARINGS



ADMINISTRATIVE DIRECTIVE NO: 2013-06

**SUBJECT: PRESENTATION OF DOCUMENTS BY AN INMATE AT A HEARING**

## INTRODUCTION

This Administrative Directive outlines a prisoner's right to bring documents to a hearing and actions the panel may take to facilitate the consideration of those documents.

## LEGAL AUTHORITY

**California Code of Regulations, title 15, section 2249** provides that, "A prisoner shall have the right to present relevant documents to the hearing panel. The documents should be brief, pertinent, and clearly written. They may cover any relevant matters such as mitigating circumstances, disputed facts or release planning. A copy of the documents may be placed in the prisoner's central file."

## DIRECTIVE

Parole panels shall consider any relevant documents brought to a hearing by a prisoner that are brief, pertinent and clearly written. However, if the panel determines that the documents do not meet one of these criteria, the panel may do any of the following:

1. Allow the prisoner to summarize the pertinent contents of the documents in his or her closing statement;
2. Allow the prisoner's attorney to summarize the pertinent contents of the documents in his or her closing statement; or
3. Advise the prisoner that an attempt will be made to review the documents during recesses and deliberations.

*This Administrative Directive shall take effect immediately. If you have any questions concerning the contents of this Administrative Directive please contact the legal office at (916) 324-7604.*

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